

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 591 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

HASMUKH VALJIBHAI BHAVSAR THRO'POWER OF ATTON.

Versus

BHANIBEN @ JAIVANTIBEN NARSIBHAI GAJJAR

Appearance:

MR CL SONI for Petitioner

MR PN BAVISHI for Respondent No. 1

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 14/10/97

ORAL JUDGEMENT

This Revision arises from the order passed by the learned Civil Judge (S.D.) at Gandhidham, District Kutch on 27th January 1997 below application Ex.13 in Civil Misc. Application No.3 of 1996.

2. The petitioner herein has filed Civil Misc. Application No.3 of 1996 before the learned Judge being the competent Authority under Section 31(A) of the Bombay Rents, Hotel and Lodging House Rates Control Act (for short "the Rent Act") for obtaining possession of the suit premises on the ground of personal requirement as envisaged under Section 13(AA) of the Rent Act, the

petitioner being a specified landlord. The respondents moved application Ex.13 for obtaining leave to appear and contest this application as per procedure prescribed in section 31(A) of the Rent Act. He raised various contentions both of the facts as well as law inter-alia including the contention with regard to greater hardship. The learned trial Judge by his speaking order dated 27.1.1997 allowed the application Ex.13. The petitioner has challenged the said order before this Court.

3. I have heard the learned Advocate appearing for the parties in this Revision Application. I have gone through the order passed by the learned trial Judge. What the learned trial Judge has done is to find out from the application that the facts set out by the respondents disclosed the grounds which might disentitle the petitioner from obtaining an order of recovery of possession of the suit premises on the ground specified in Section 13(AA) of the Rent Act. The apprehension of the learned Advocate for the applicants about expression of any opinion is illfounded inasmuch as the learned trial Judge has not decided any question which arises from the application for leave to contest the main matter. What he has said is that the application discloses prima facie case as contemplated by Sub.Section 7 of Section 31(A) of the Rent Act.

4. Mr.Soni, learned Advocate appearing for the applicants has made reference to a decision of this Court in the case of Major Homi Rustom Daruwala V/s. Peti Sorabji Deodha, reported in 1995 A.I.H.C. 1407 for submitting that bearing in mind the spirit of the provision contained in Section 13(AA) of the Rent Act the trial Court should be directed to decide the application within the specified time limit. He drew the attention of this Court to the following observation head-noted in the above citation :

"Section 13AA begins with non obstante clause and that has an overriding effect. This Section confers right on members of armed forces of the Union and their widows and heirs to recover possession for their occupation. The legislature wanted that members of armed forces, their widows and/or their heirs must get priority in getting possession of the premises on the ground of their personal bona fide requirement and for that purpose such members of the armed forces are required to apply to the competent authority. Before applying to the competent authority for eviction of the tenant on the

ground that premises are bona fide required by such specified landlord, one is required to produce a certificate to this effect granted by the authorised officer which shall be conclusive evidence of the facts stated therein. The respondent defendant was not in a position to solicit any information which would render the bona fide requirement of the petitioner plaintiff doubtful. The bonafide requirement of a residential premises is reaffirmed in cross-examination. The trial aCourt was not at all justified in rejecting a convincing evidence which has ring of truth all around. Unfortunately an army officer has decided to conduct his own case personally and in absence of experience of court proceedings, he has not led evidence on the relevant aspect such as his residing with mother in rented premises where decree of eviction is passed against mother and possession handed over to the landlord. Benefit of such omission can not go to the tenant who has other residential accommodation.

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The competent authority has entered the arena of conjectures and surmises and rejected the application, which is not proper. If such a retired Army Officer is denied residential accommodation despite statutory protection, his faith from the system of administration of justice would be shaken. The very purpose for which the legislature has introduced the Section 13-AA in the Act would be frustrated.

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The Judgment and order of the Trial Court quashed and set aside. A decree for possession passed against respondents and directions issued for handing over peacedful and vacant possession of the suit premises to the petitioner."

5. In my opinion while finding that the learned trial Judge has not committed any jurisdictional error or even any eror of law the last submission of Mr.Soni deserves to be accepted and the learned Advocate for the respondent has no objection if appropriate direction for speedy disposal of the petitioner's application is issued to the trial Court.

6. Following order is, therefore, passed :

The impugned order granting leave to appear and contest the main application bearing Civil Misc. Application No.3 of 1996 is hereby maintained, but the learned Competent Authority being Civil Judge (S.D.) at Gandhidham, Dist. Kutch is hereby directed to hear and decide Civil Misc. Application No.3 of 1996 after giving appropriate opportunity to both the parties in accordance with law, as expeditiously as possible, preferably within three months from the date of receipt of this direction.

Subject to this, Rule is discharged. No order as to costs.

Office to issue writ immediately.

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